

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES, LLC, FOREST)
 LABORATORIES HOLDINGS, LTD.,)
 MERCK KGaA and MERCK PATENT)
 GESELLSCHAFT MIT BESCHRÄNKTER)
 HAFTUNG,)
)
 Plaintiffs,)
) C.A. No. 15-272 (GMS)
 v.) CONSOLIDATED
)
)
 ACCORD HEALTHCARE INC.,)
)
)
 Defendant.)

STIPULATION AND ORDER

IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that
 the following constructions shall be given to the claim terms in the listed patents below:

Claim Term	Patent/Claim	Stipulated Construction
“administer” “administered” “administering”	’020 patent, claim 2; ’195 patent, claims 1-2; ’804 patent, claim 1; ’921 patent, claims 10, 12-14	“deliver[ed/ing] into the body”
“corresponding to”	’804 patent, claims 1-3	“matching the values recited in the claims, including the error ranges stated therein”
“exhibits the following XRD data”	’020 patent, claim 1	“show all the following peaks and intensities, including an error range of +/- 0.1 θ for the two-theta values”
“A method of treating a patient suffering from a depressive disorder, an anxiety disorder, a bipolar	’020 patent, claim 2 ’921 patent, claims 10, 12-14	Entire preamble is limiting

Claim Term	Patent/Claim	Stipulated Construction
disorder, mania, dementia, a substance-related disorder, a sexual dysfunction, an eating disorder, obesity, fibromyalgia, a sleeping disorder, a psychiatric disorder, cerebral infarct, tension, side-effects in the treatment of hypertension, a cerebral disorder, chronic pain, acromegaly, hypogonadism, secondary amenorrhea, premenstrual syndrome, undesired puerperal lactation, or combinations thereof ...”		

IT IS FURTHER STIPULATED by the parties, pursuant to Exhibit A to the Joint Claim Construction Chart (D.I. 80), and subject to the approval of the Court, that the following constructions shall be given to the claim terms in the listed patents below:

Terms for which the parties agree on claim construction

Claim Term	Patent/Claim	Stipulated Construction
“treating”	‘020 patent, claim 2; ‘195 patent, claim 1 ‘804 patent, claim 1 ‘921 patent, claims 10, 12-14	“attempting to cause a therapeutic effect on”
“is treated in the patient”	‘195 patent, claims 1 ‘804 patent, claim 1	“an attempt is made to cause a therapeutic effect in the patient”

Terms for which the parties agree no construction is required and plain and ordinary meaning should be applied

Claim Term	Patent/Claim
“hydrate”	‘195 patent, claims 4-6; ‘921 patent, claims 1, 5
“anhydrate”	‘020 patent, claim 1 ‘195 patent, claims 3, 7 ‘804 patent, claim 1 ‘921 patent, claims 1-3, 5, 11
“solvate”	‘921 patent, claims 1, 4
“dihydrochloride”	‘921 patent, claim 1
“conventional” ¹	‘195 patent, claim 2 ‘804 patent, claim 1 ‘921 patent, claims 11, 15

Clauses the parties agree are limiting

Clause	Patent/Claim
“wherein said patient is suffering from a depressive disorder”	‘020 patent, claim 4
“wherein said patient is suffering from a major depressive disorder”	‘020 patent, claim 5
“wherein the major depressive disorder is treated in the patient”	‘804 patent, claim 1
“wherein a depressive disorder is treated in the patient”	‘195 patent, claim 1
“wherein the depressive disorder is major depressive disorder”	‘195 patent, claim 16

Clauses the parties agree are not limiting

Clause	Patent/Claim
“A method of treating a depressive disorder”	‘195 patent, claim 1
“A method of treating a major depressive disorder”	‘804 patent, claim 1

The parties agree that these stipulated constructions apply only to the patents-in-suit, and have no bearing on the construction of claim terms in any other patent. Further, the stipulated constructions cannot be used as evidence against any party in any other pending or future suit.

¹ Defendants reserve the right to contend that this term is indefinite under 35 U.S.C. § 112.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)
Maryellen Noreika (#3208)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@mnat.com
mmoreika@mnat.com

*Attorneys for Plaintiffs Forest Laboratories,
LLC, Forest Laboratories Holdings, Ltd.,
Merck KGaA, and Merck Patent GmbH*

OF COUNSEL:

David B. Bassett
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

Vinita Ferrera
Emily R. Whelan
Anna E. Lumelsky
William C. Kinder
Deric X. Geng, Ph.D.
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

PHILLIPS GOLDMAN McLAUGHLIN & HALL, P.A.

/s/ David A. Bilson

John C. Phillips, Jr. (#110)
David A. Bilson (#4986)
1200 North Broom Street
Wilmington, DE 19806
(302) 655-4200
dab@pgmhlaw.com
jcp@pgmhlaw.com

*Attorneys for Defendant Accord Healthcare
Inc.*

OF COUNSEL:

Jill M. Browning
Michael J. Fink
Neil F. Greenblum
P. Branko Pejic
Paul A. Braier
GREENBLUM AND BERNSTEIN, P.L.C.
1950 Roland Clarke Place # 100
Reston, VA 20191
(703) 390-1298

SMITH, KATZENSTEIN & JENKINS LLP

/s/ Eve H. Ormerod

Neal C. Belgam (#2721)
Eve H. Ormerod (#5369)
The Brandywine Building
1000 West Street, Suite 1501
P.O. Box 410
Wilmington, DE 19899
(302) 652-8400
nbelgam@skjlaw.com
eormerod@skjlaw.com

*Attorneys for Defendants Alembic
Pharmaceuticals Ltd., Alembic Global
Holding SA and Alembic
Pharmaceuticals, Inc.*

OF COUNSEL:

William O. Adams
Karen M. Cassidy
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404

CAESAR RIVISE, PC

/s/ R. Touhey Myer

R. Touhey Myer (#5939)
800 North King Street, Suite 304
Wilmington, DE 19801
(302) 544-9100
tmyer@crbcp.com

*Attorneys for Defendant Invagen
Pharmaceuticals Inc.*

OF COUNSEL:

Robert S. Silver
Salvatore Guerriero
Lynn Terrebonne
Pei-Ru Wey
CAESAR RIVISE, PC
1635 Market Street
Seven Penn Center, 12th Floor
Philadelphia, PA 19103
(215) 567-2010

POTTER ANDERSON & CORROON, LLP

/s/ Bindu A. Palapura

David E. Moore (#3983)
Bindu A. Palapura (#5370)
1313 North Market Street
Hercules Plaza, 6th Floor
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com

*Attorneys for Defendant Teva
Pharmaceuticals USA, Inc.*

OF COUNSEL:

J.C. Rozendaal
Michael E. Joffre
Miles J. Sweet
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street NW, Suite 400
Washington, DC 20036
(202) 326-7900

October 18, 2016

MORRIS JAMES LLP

/s/ Kenneth L. Dorsney

Kenneth L. Dorsney (#3726)
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801-1494
(302) 888-6855
Kdorsney@morrisjames.com

*Counsel for Defendants Apotex Inc. and Apotex
Corp.*

OF COUNSEL:

Richard T. Ruzich
Stephen R. Auten
Ian Scott
TAFT STETTINIUS & HOLLISTER LLP
111 East Wacker Drive, Suite 2800
Chicago, IL 60601
(312) 527-4000

SO ORDERED this _____ day of October 2016.

United States District Judge